IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PETER J. SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:06-CV-118-WKW
	)	(WO)
ALABAMA DEPARTMENT OF TRANSPORTATION,	)	
	)	
	)	
Defendant.	)	

ORDER

This case is now before the court on the plaintiff's Motion for Leave to Appeal In Forma Pauperis (Doc. # 16), filed on June 1, 2006.

Title 28 U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous." *Coppedge v. United States*, 369 U.S. 438, 445 (1962).[1] "The statute provides that a court 'may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.'" *Attwood v. Singletary*, 105 F.3d 610, 613 (11th Cir. 1997) (citing 28 U.S.C. § 1915(d) (1996)).

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[1] *See* 28 U.S.C. § 1915(e):

> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal—
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief against a defendant who is immune from such relief.

> This circuit has defined a frivolous appeal under section 1915(d) as being one "'without arguable merit.'" *Harris v. Menendez*, 817 F.2d 737, 739 (11th Cir.1987)(quoting *Watson v. Ault*, 525 F.2d 886, 892 (5th Cir.1976)). "'Arguable means capable of being convincingly argued.'" *Moreland v. Wharton*, 899 F.2d 1168, 1170 (11th Cir.1990) (per curiam) (quoting *Menendez*, 817 F.2d at 740 n.5); *see Clark,* 915 F.2d at 639 ("A lawsuit [under section 1915(d)] is frivolous if the 'plaintiff's realistic chances of ultimate success are slight.'" (quoting *Moreland*, 899 F.2d at 1170)).

Sun v. Forrester, 939 F.2d 924, 925 (11th Cir. 1991), *reh'g denied*, 503 U.S. 999 (1992). *See also Weeks v. Jones*, 100 F.3d 124, 127 (11th Cir. 1996) (stating that "[f]actual allegations are frivolous for purpose of [28 U.S.C.] § 1915(d) when they are 'clearly baseless;' legal theories are frivolous when they are 'indisputably meritless.'") (citations omitted).

Applying the foregoing standard, this court is of the opinion that the plaintiff's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith.

Accordingly, it is ORDERED that the plaintiff's motion to proceed on appeal *in forma pauperis* is hereby DENIED, and that the appeal in this case is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE this 14th day of July, 2006.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE